

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
RASHIDA BANO ... **MEMBER (Judicial)**

Service Appeal No.49/2022

Date of presentation of Appeal.....13.01.2022
Date of Hearing.....28.10.2024
Date of Decision.....28.10.2024

Mukhtiar Ahmad son of Raja Hebat Khan resident of Chinar Road,
Mansehra,.....(**Appellant**)

Versus

1. **Secretary Environment, Government of Khyber Pakhtunkhwa, Peshawar.**
2. **Chief Conservator of Forest, Region-I, Peshawar.**
3. **Conservator of Forests, FP and M Circle Peshawar.**
4. **Conservator of Forests, Hazara Region, Abbottabad.**
5. **Divisional Forests Officer, Working Plan, District Mansehra.**
.....(**Respondents**)

Present:

Mr. Ali Khan, Kamal, Advocate.....For the appellant
Mr. Umair Azam, Additional Advocate General.....For respondents

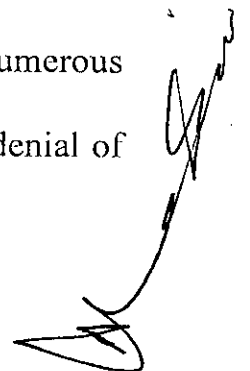
**SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE IMPUGNED SENIORITY
LISTS DATED 01.01.2006 AND 13.12.2011 WHEREBY
THE APPELLANT DESPITE SENIOR MOST, WAS
SHOWN AT BOTTOM OF THE SENIORITY LIST
AND THUS DEPRIVED FROM HIS LEGAL RIGHT
AND LEGITIMATE RIGHT OF PROMOTION.**

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case,
as per averments of the appeal, are that appellant was appointed as
Forester vide order dated 23.08.1978; that the department prepared

seniority list in the year 2004, wherein, appellant's position was figured at Serial No.2; that in the year 2006, another seniority list was issued placing the appellant at Serial No.101, junior to his alleged juniors; that in the year 2011, the appellant was placed at Serial No.75 and his date of appointment was allegedly mentioned wrong as 01.06.1994 instead of 23.08.1978; that feeling aggrieved, he filed appeal before the respondent No.2 on 22.11.2013 but the same remained un-responded; that he again made a written reminder for correction of seniority list dated 31.03.2015; that later on, the respondents issued letter dated 16.02.2016 whereby name of the appellant was not existing whereas, his alleged juniors were included for the purpose of promotion and documents were also sought from them; that an inquiry was also conducted by the respondents but no order was passed regarding his promotion nor the seniority list was rectified; that the appellant filed Writ Petition No.295-A of 2016 before the Hon'ble Peshawar High Court, Abbottabad Bench, which was entrusted to this Tribunal through Appeal No.1569/2018, which was withdrawn by the appellant in order to file fresh one, on the technical grounds, hence, the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.



3. We have heard learned counsel for the appellant and learned Additional Advocate General for respondents.

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

5. The appellant, appointed as a Forester on August 23, 1978, faced significant discrepancies in his seniority listings over the years. Initially ranked second in a seniority list from 2004, he was unexpectedly demoted to Serial No. 101 in 2006, and subsequently to Serial No. 75 in 2011, with his appointment date incorrectly recorded as June 1, 1994. Despite raising these issues through appeals and reminders, including a formal appeal in November 2013 and a follow-up in March 2015, the department failed to respond adequately. Further complicating matters, a 2016 letter excluded the appellant from a promotion list while his juniors were included, prompting an inquiry that ultimately yielded no resolution. The appellant's subsequent Writ Petition No. 295-A of 2016 was transferred to this Tribunal but was later withdrawn for procedural reasons, leading to the current service appeal.

6. The seniority list from which the appellant had grievance, was of 31.03.2015. The appellant ought to have assailed the said order through a departmental appeal, in case of no response within 90 days, he ought to have filed appeal before the Tribunal, within a month after expiry of statutory period of ninety days of his filing the departmental

appeal. However, the appellant has approached this Tribunal on 13.01.2022 which is barred by time. We in this respect rely on a recent judgment of Supreme Court of Pakistan reported as 2023 SCMR 291 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala versus Khalid Mehmood and others" the relevant para is reproduced below:

"12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party. In the case of Messrs. Blue Star Spinning Mills LTD -Vs. Collector of Sales Tax and others (2013 SCMR 587), this Court held that the concept that no limitation runs against a void order is not an inflexible rule; that a party cannot sleep over their right to challenge such an

order and that it is bound to do so within the stipulated/prescribed period of limitation from the date of knowledge before the proper forum in appropriate proceedings. In the case of Muhammad Iftikhar Abbasi Vs. Mst. Naheed Begum and others (2022 SCMR 1074), it was held by this Court that the intelligence and perspicacity of the law of Limitation does not impart or divulge a right, but it commands an impediment for enforcing an existing right claimed and entreated after lapse of prescribed period of limitation when the claims are dissuaded by efflux of time. The litmus test is to get the drift of whether the party has vigilantly set the law in motion for the redress or remained indolent. While in the case of Khudadad Vs. Syed Ghazanfar Ali Shah @ S. Inaam Hussain and others (2022 SCMR 933), it was held that the objective and astuteness of the law of Limitation is not to confer a right, but it ordains and perpetrates an impediment after a certain period to a suit to enforce an existing right. In fact this law has been premeditated to dissuade the claims which have become stale by efflux of time. The litmus test therefore always is whether the party has vigilantly set the law in motion for redress. The Court under Section 3 of the Limitation Act is obligated independently rather as a primary duty to advert the question of limitation and make a decision, whether this question is raised by other party or not. The bar of limitation in an adversarial lawsuit brings forth valuable rights in favour of the other party. In the case of Dr. Muhammad Javaid Shafti Vs. Syed Rashid Arshad and others (PLD 2015 SC 212), this Court held that the law of limitation requires that a person must approach the Court and take recourse to legal remedies with due diligence, without dilatoriness and negligence and within the time provided by the law, as against choosing his own time for the purpose of bringing forth a legal action at his own whim and desire. Because if that is so permitted to happen, it shall not only result in the misuse of the judicial process of the State, but shall also cause exploitation of the legal system and the society as a whole. This is not permissible in a State which is governed by law and Constitution. It may be relevant to mention here that the law providing for limitation for various causes/reliefs is not a matter of mere technicality but foundationally of the "Law" itself."



7. In view of above, instant service appeal, being barred by time, is dismissed with costs. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LISTS DATED 01.01.2006 AND 13.12.2011 WHEREBY THE APPELLANT DESPITE SENIOR MOST, WAS SHOWN AT BOTTOM OF THE SENIORITY LIST AND THUS DEPRIVED FROM HIS LEGAL RIGHT AND LEGITIMATE RIGHT OF PROMOTION.


PRESENT


1. Mr. Muhammad Ali Khan, Advocate, for the Appellant
2. Mr. Umair Azam, Additional Advocate General, for respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security fee	Rs.100/-	4. Security fee	Rs. Nil
5. Process fee	Rs. Nil	5. Process fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 28th day of October 2024.


Rashida Bano
Member (Judicial)


Kalim Arshad Khan
Chairman

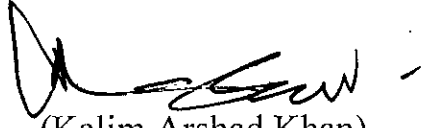
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.49/2022

Mukhtiar Ahmad

versus

Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p>Order-16 28th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Ali Khan, Advocate on behalf of appellant.2. Mr. Umair Azam, Additional Advocate General for the respondents. <p><u>Kalim Arshad Khan, Chairman:</u> Vide our detailed judgment of today, placed on file, instant service appeal, being barred by time, is dismissed with costs. Consign.</p> <p>2. <i>Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 28th day of October, 2024</i></p> <p>(Rashida Bano) Member (J)</p> <p><i>*Mutazem Shah*</i></p> <p> (Kalim Arshad Khan) Chairman</p>